IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71—708

PAUL J. TRAFFICANTE, *et al.*,

Petitioners,

vs.

METROPOLITAN LIFE INSURANCE COMPANY, *et al.*,

Respondents.

BRIEF FOR THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AS *AMICUS CURIAE*

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Interest of the Amicus

The NAACP Legal Defense and Educational Fund, Inc. is a non-profit corporation formed in 1939 under the laws of the State of New York. It is independent of other organizations and supported by public contributions.

The Legal Defense Fund was founded to assist blacks who suffer racial injustice to secure basic rights through the legal process. We receive many requests for assistance from victims of housing discrimination, and litigate or support numerous cases in state and federal forums to advance the goal of "fair housing throughout the United States" (42 U.S.C. §3601). Our experiences indicate that adequate enforcement of fair housing laws requires a broad definition of the classes of persons entitled to commence administrative and judicial proceedings. We believe that the

decision of the courts below, denying the right of tenants to challenge discriminatory actions of their landlord which prevent the meaningful racial integration of the large housing development in which they live, misconceives the intent of Congress and undermines the promise of fair housing made by federal law.

The Legal Defense Fund was permitted to participate as *amicus curiae* in the court below. All parties have consented to our filing a brief *amicus curiae* in this Court, and their letters of consent have been lodged with the Clerk.

Argument

The issue in this case is the decision of the United States Court of Appeals for the Ninth Circuit, 446 F.2d 1158, that present residents of the Parkmerced housing development in San Francisco, California, lack standing to challenge racially discriminatory practices of their landlord which have created an almost totally segregated white community. There are two reasons why this judgment should be reversed and petitioners allowed to complain that their landlord has violated the Fair Housing Act of 1968, 42 U.S.C. §§3601-19, and the Civil Rights Act of 1866, 42 U.S.C. §1982. The first is that Parkmerced's discrimination has injured them by preventing the racial integration of the community in which they live, and this injury entitles them to standing. The second is that in addition to seeking a remedy for their own injury, petitioners advance the interests of both blacks who have been denied apartments in Parkmerced and the public which has a vital stake in the enforcement of fair housing laws. The force of neither reason is diminished by the Attorney General's power to bring "pattern or practice" suits, 42 U.S.C. §3613, to enforce the Fair Housing Act of 1968.

A. *The Injury to Present Tenants Caused By Their Landlord's Actions to Prevent the Racial Integration of Their Community Gives Them Standing to Bring This Lawsuit.*

The Fair Housing Act of 1968 describes a person who has the right to invoke the administrative process of investigation and conciliation, and then follow it by a judicial action if conciliation fails, as "any person who claims to have been injured by a discriminatory housing practice" or a "person aggrieved". 42 U.S.C. 3610(a) and (d).[1] The Civil Rights Act of 1866 contains no definition of the persons entitled to enforce it. Standing to enforce the 1866 Act is limited only by the "cases" and "controversies" requirements of Article III of the Constitution, which this Court interprets to require a "personal stake in the outcome of the controversy," *Baker* v. *Carr*, 369 U.S. 186, 204, and the further requirement that the "interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question," *Association of Data Processing Organizations* v. *Camp*, 397 U.S. 150, 153. Under both new and old fair housing acts complainants must be allowed to prove their allegations if they properly claim "injury" or a "personal stake", and an "interest" related to the objective of fair housing.

Petitioners' claimed injury[2] is as serious and fundamental as any in our society. It is a claim that segregation diminishes the well-being of the majority just as it victimizes minorities. No less than "aesthetic and environmental well-being," the opportunity of racial groups to live

[1] Presumably the same standard applies to enforcement actions under 42 U.S.C. §3612.

[2] As it was obligated to do on a motion to dismiss, the Court of Appeals accepted petitioners' allegations of injury and discrimination as true. 446 F.2d at 1162, fn. 8.

together is an "important ingredient of the quality of life in our society . . . deserving of legal protection through the judicial process." *Sierra Club* v. *Morton*, — U.S. —, 40 U.S.L.W. 4397, 4400. Moreover, the residents of Parkmerced claim they are "among the injured." *Ibid.* They assert a "personal stake" in a community where the common experiences of blacks and whites allow both an alternative to the mutually degrading experience of enforced segregation. They claim that the segregation of *their* community has resulted from systematic racial discrimination by *their* landlord.[1]

Not only is their injury serious, and their stake personal, but the interest of petitioners in residential integration is clearly central to the purpose of the fair housing laws. These laws protect the rights of minorities seeking housing from discriminatory refusals, conditions, advertising, and misrepresentations, 42 U.S.C. §3604(a-d), and in that way enable the creation of racially integrated neighborhoods. They also protect the right of majority and minority alike to live in already integrated neighborhoods by prohibiting "blockbusting," 42 U.S.C. §3604(e), the real estate practice of causing the re-segregation of integrated neighborhoods. They establish a national policy which is no less than "fair housing throughout the United States." 42 U.S.C. §3601.

Indeed, neither court below held that the injury alleged by petitioners lacked significance or that the interest asserted was unprotected by the fair housing laws. Their argument appears to be that the Fair Housing Act of 1968 entrusts the responsibility of protecting the public in-

[1] Whether residents of the greater community are entitled to sue is not involved here. This case concerns tenants having a direct relationship with a discriminating landlord in a dispute which affects their immediate neighborhood.

terest in fair housing and creating integrated communities exclusively to the Attorney General. This argument seriously misconstrues the enforcement powers of the Attorney General.

The Fair Housing Act authorizes the Attorney General to bring actions to enjoin a "pattern or practice" of discrimination or when a denial of fair housing rights "raises an issue of general public importance." 42 U.S.C. §3613. This has been interpreted to mean that he may not litigate an " 'isolated or accidental or peculiar event' ", *United States* v. *West Peachtree Tenth Corporation*, 437 F.2d 221, 227 (5th Cir. 1971). However, nothing in the language or history of the Act suggests that this limitation on the Attorney General's power should operate to exclude injured private parties from complaining about discriminatory patterns and practices or raise issues of general public importance. The limitations on the power of the Attorney General are far better read as an effort to conserve and focus the Attorney General's limited resources to enforce the fair housing laws than read as an indication that Congress intended to limit the right of aggrieved persons to seek private enforcement of these laws. It is simply contrary to the national fair housing policy to judicially create a limitation on enforcement where no such limitation exists in the laws Congress enacted.

B. *Present Residents May be the Only or Most Effective Adversary Who Can Enforce the Fair Housing Laws, and They also Serve the Public Interest in Doing So.*

In addition to their own direct interests as residents of Parkmerced, petitioners' complaint serves the interests of blacks who have been discriminated against at Parkmerced as well as the public interest in the enforcement of the fair housing laws.

In deciding this case, the Court should take account of the realities of discrimination in the housing market. The experience of *amicus* has shown that few persons discriminatorily denied housing will actually pursue the legal remedies available to them. Many victims of housing discrimination may not even be aware of the fact that they were rejected for racial reasons. Most landlords adeptly find plausible non-racial excuses to hide discriminatory refusals and protect themselves from lawsuits. Our experience with a substantial number of fair housing complaints demonstrates that black applicants are daily turned away from "white" housing on the landlord's representation that:

> "The apartment we advertised was rented just an hour ago;" *or*
>
> "The only vacancy we have is an apartment renting for $50 a month more than that;" *or*
>
> "I'm sorry, but we don't accept tenants with pets (children) (large families) (etc.);" *or*
>
> "You'll have to fill out an application with a letter of reference from your employer (a local bank) (your former landlord) (a present tenant) (etc.)."

Yet the applicants often have no way of knowing whether these representations are true or whether they are subterfuges for discouraging the applicant and denying fair housing. In the experience of *amicus* only a relative handful of fair housing cases can be successfully litigated without advance preparation, the assistance of a fair housing committee, white and black "testers," and the ability to spend the time, effort and expense of pressing a complaint through administrative agencies or the courts. Most applicants for housing are obviously not prepared for all this. The consequence is that many landlords discriminate with little fear of being caught. However, there are occasions

when the landlord's tenants enjoy a vantage point which enables them to know that racial exclusion is practiced.[4] They may know when apartments are actually available, and when terms are discriminatorily varied for blacks. In these situations the tenants of a discriminating landlord may be "the only effective adversary" to challenge racially exclusive practices, *cf. Barrows* v. *Jackson*, 346 U.S. 249, 259, *Eisenstadt* v. *Baird*, —— U.S. ——, 40 U.S.L.W. 4303, 4305, and it would further the national fair housing policy to allow them to assume that burden.

Just as petitioners' efforts advance the interest of minority group members who have been victimized by discrimination, they correspondingly advance the public interest in enforcement of fair housing laws. In doing so petitioners fill a void in the capability of public agencies to enforce these laws. The administrative mechanism established by the Fair Housing Act of 1968 can only make a minimal contribution to realizing the national policy of fair housing. Under the 1968 Act, the Department of Housing and Urban Development may receive, investigate, and attempt to conciliate complaints, but it has no cease and desist powers or other coercive means of enforcing the laws. See 42 U.S.C. §3610(a).[5] "[T]he limited size of

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[4] Of course, many black people are aware of pervasive race prejudice in some areas and do not even apply for housing and subject themselves to the humiliation of a refusal. A report of the United States Commission on Civil Rights states that

> "Many minority group members no longer even try to find homes in all-white areas because they fear they will 'get the runaround' or receive hostile treatment from at least some neighbors. So the pattern or exclusion is continued—in spite of recent laws and court decisions to the contrary." *Racism in America*, (U.S. Gov't. Printing Office, January 1970).

[5] The Department of Housing and Urban Development still lacks the power to go to court recently granted to the Equal Employment Opportunity Commission. See Equal Employment Opportunity Act of 1972, Pub. L. 92-261.

the Attorney General's staff for civil rights enforcement,"[6] in comparison to the enormity of the task of assuring "fair housing *throughout* the United States" (42 U.S.C. §3601, emphasis added), renders it impossible to rely on the Attorney General to undertake all the public enforcement which is necessary to make the national fair housing policy a reality. Without private actions the public interest in fair housing enforcement would be poorly served.

This Court and lower courts recognize that the primary burden of enforcing anti-discrimination laws must fall on private litigants, acting in effect as "private attorney general." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402; *Hutchings* v. *United States Industries, Inc.*, 428 F.2d 303, 310 (5th Cir. 1970); *Bowe* v. *Colgate-Palmolive Co.*, 416 F.2d 711, 719-20 (7th Cir. 1969); *Pettway* v. *American Cast Iron Pipe Co.*, 411 F.2d 998, 1005 (5th Cir. 1969); *Jenkins* v. *United Gas Corp.*, 400 F.2d 28, 32-33 (5th Cir. 1968); *Oatis* v. *Crown Zellerbach Corp.*, 398 F.2d 496, 499 (5th Cir. 1968). This is consistent with the general proposition that once a person has properly invoked review "that person may argue the public interest in support of his claim." *Sierra Club* v. *Morton*, —— U.S. ——, 40 U.S.L.W. at 4400. Private persons affected by unlawful discrimination should not be required to depend on the Attorney General to decide whether to commit scarce government resources to a particular case. They must be permitted to protect their own interests and, in so doing, advance the interest of both racial minorities and the public in fair housing.

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[6] Memorandum of the United States in Support of Petition for Certiorari, p.4.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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Oct. 27, 1972 - Reply brief of petitioners filed. NOT PRINTED.